INDEX

Petition:	Page
Question presented	2
Statement	2
Statute involved	6
Specification of errors to be urged	7
Reasons for granting the writs	8

CITATIONS

Dime Trust & Safe Deposit Company v. *Phillips*, 30 F. (2d) 395 (pending on appeal, C. C. A. 3d)	8
United States v. *Tyler*, 33 F. (2d) 724; No. 428, October Term, 1929	8
Revenue Act of 1921, c. 136, 42 Stat. 227, 277, 278, 279:	
Sec. 401	6
Sec. 402	6
Sec. 402 (d)	6

In the Supreme Court of the United States

OCTOBER TERM, 1929

No. —

UNITED STATES OF AMERICA, PETITIONER

v.

PROVIDENT TRUST COMPANY OF PENNSYLVANIA AND Charles Sinkler, Administrators c. t. a. of estate of James K. Young, Deceased

---

No. —

ROBERT H. LUCAS, COMMISSIONER OF INTERNAL Revenue, petitioner

v.

GIRARD TRUST COMPANY AND JOSEPH L. WOOLSTON, Executors of the Estate of Beulah H. J. Woolston, Deceased

---

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION

The Solicitor General, on behalf of the United States of America and the Commissioner of Internal Revenue, prays that writs of certiorari issue to review the judgments of the United States Circuit Court of Appeals for the Third Circuit

entered in the above-entitled causes on October 4, 1929. In the *Young case* the decision of the District Court of the United States for the Eastern District of Pennsylvania was affirmed. In the *Woolston case,* the decision of the United States Board of Tax Appeals was affirmed.

QUESTION PRESENTED

Is Section 402 (d) of the Revenue Act of 1921 unconstitutional in so far as it requires (with certain restrictions not here material) that the value of property held by husband and wife as tenants by the entirety be included in the gross estate of the deceased spouse for Federal estate tax purposes?

STATEMENT

Young Case.—The facts as set forth in the statement of claim and admitted by the statutory demurrer, are as follows:

By deeds dated May 8, 1912, July 24, 1901, and September 16, 1903, premises located at 220–222–224 South Sixteenth Street, Philadelphia, Pennsylvania, were conveyed to James K. Young and his wife, Mary Wilson Young, as tenants by the entirety. On June 19, 1923, Young and his wife conveyed these premises to one George W. Eyre for a consideration of $160,000, of which $60,000 was paid in cash and $100,000 was taken back by the grantor and his wife as ground rent to yield an annual income of $6,000, title to the ground rent being vested in them as tenants by the entirety. (R. 5.)

By deed dated June 23, 1923, the premises located at 244 South Twenty-first Street, Philadelphia, Pennsylvania, were conveyed to Young and his wife as tenants by the entirety. (R. 5.)

No part of the purchase price of any of the above-mentioned property was furnished by the wife. (R. 5.)

On or about August 28, 1923, Young, then a resident of Pennsylvania, died, leaving surviving him his wife, who was the sole beneficiary under his will. (R. 4.)

Thereafter the respondents Provident Trust Company and Charles Sinkler were appointed the administrators *c. t. a.* of the estate of the decedent. On or about August 26, 1924, they filed with the Collector of Internal Revenue for the First District of Pennsylvania a Federal estate tax return showing no tax liability. Upon the audit of the return, the Commissioner of Internal Revenue, acting under the provisions of Section 402(d) of the Revenue Act of 1921, increased the gross estate by $151,150, which represented the value of the ground rent, and accrued interest thereon, with respect to the property located at 220–222–224 South Sixteenth Street, Philadelphia, and the value of the property known as 244 South Twenty-first Street, Philadelphia. (R. 4–7.)

From notice of a deficiency of $1,244.43, determined by the Commissioner, the respondents appealed to the Board of Tax Appeals, which

entered an order of no deficiency. (5 B. T. A. 1004; R. 6, 7.)

The Commissioner did not acquiesce in this decision, and suit was instituted in the District Court for the Eastern District of Pennsylvania to recover the deficiency in tax. That court held, however, that Section 402(d) of the Revenue Act of 1921, in so far as it required the property held by the decedent and his wife as tenants by the entirety to be included in his gross estate, was unconstitutional, and entered judgment for the administrators. (R. 16.)

The United States thereupon appealed to the Circuit Court of Appeals for the Third Circuit, which, on October 4, 1929, affirmed the decision of the District Court. (R. 20–27.)

Woolston Case.—(As the Board of Tax Appeals stated in its findings of fact and opinion (R. 12) that "The facts are simple and are not in dispute," and therefore did not attempt to set them forth *in extenso,* the following statement of facts is taken not only from the Board's findings but also from the petition, supporting documents, and answer filed before the Board.)

Prior to 1923 (apparently about 1910) certain realty in Pennsylvania became vested in Beulah H. J. Woolston, the decedent, in fee simple, as her sole and separate estate, her husband, Joseph L. Woolston, not being mentioned in the deed. (R. 5, 8, 10.)

On April 27, 1923, the decedent, her husband joining in the deed, conveyed the realty to one Guy B. Watton, his heirs and assigns, in fee simple, who three days later, on April 30, 1923, reconveyed the same to Joseph L. Woolston and Beulah H. J. Woolston, "their heirs and assigns," "as tenants by the entireties." (R. 5, 10, 12.)

Beulah H. J. Woolston died February 3, 1924. (R. 11, 12.) The Commissioner of Internal Revenue included in her gross estate for Federal estate tax purposes the entire value of the real estate held by her and her husband as tenants by the entirety (R. 8), and determined a deficiency in estate tax in the sum of $2,205.32 (R. 9).

From this determination the respondents Girard Trust Company and Joseph L. Woolston, executors of the estate of Beulah H. J. Woolston, took an appeal to the Board of Tax Appeals. In the deficiency letter attached to the petition on appeal filed with the Board (R. 7–10), the Commissioner stated that no consideration whatever passed in the two transactions involving Guy B. Watton above referred to, "it being certified in the deed that the consideration in both instances was less than $100 a merely nominal sum" (R. 8). The respondents did not assign any error as to this finding of the Commissioner in their petition to the Board (R. 3–6), and the Board made no finding to the contrary (R. 12–13).

The Board decided that the inclusion in the decedent's gross estate of the value of the real estate

held by her and her husband as tenants by the entirely was erroneous (10 B. T. A. 1100; R. 12), and entered an order of redetermination stating that there had been an overpayment of the estate tax in the amount of $22.79 (R. 14).

On petition for review filed by the Commissioner, the Circuit Court of Appeals for the Third Circuit, on October 4, 1929, in a *per curiam* decision, sustained the decision of the Board upon the authority of the *Young case,* decided the same day.

STATUTE INVOLVED

Revenue Act of 1921, c. 136, 42 Stat. 227, 277, 278, 279:

> SEC. 401. That, in lieu of the tax imposed by Title IV of the Revenue Act of 1918, a tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 403) is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this Act, whether a resident or nonresident of the United States:
>
> * * * * *
>
> SEC. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—
>
> * * * * *
>
> (d) To the extent of the interest therein held jointly or as tenants in the entirety by the decedent and any other person, or de-

posited in banks or other institutions in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than a fair consideration in money or money's worth: *Provided,* That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than a fair consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: *Provided further,* That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy in the entirety by the decedent and spouse, or where so acquired by the decedent and any other person as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of one-half of the value thereof;

* * * * *

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

I. In affirming the judgment of the District Court in the *Young case* and in affirming the order of the Board of Tax Appeals in the *Woolston case.*

II. In holding that Section 402 (d) of the Revenue Act of 1921 is unconstitutional in so far as it

requires the value of property held by husband and wife as tenants by the entirety to be included in the gross estate of the deceased spouse for Federal estate tax purposes.

REASONS FOR GRANTING THE WRITS

The decisions in the present cases are in conflict with the decision of the Circuit Court of Appeals for the Fourth Circuit in the case of *United States* v. *Tyler*, 33 F. (2d) 724, which is now pending before this Court on a writ of certiorari granted November 25, 1929 (No. 428, October Term, 1929). In that case the Government filed a memorandum stating that it did not oppose the issuance of the writ because of the conflict resulting from the *Young* decision, and this petition is filed to preserve the rights of the Government pending the decision by this Court of the *Tyler case*.

The same constitutional question is also involved in *Dime Trust & Safe Deposit Company* v. *Phillips*, 30 F. (2d) 395, in which the District Court for the Middle District of Pennsylvania rendered a decision in accord with those of the Circuit Court of Appeals for the Third Circuit in the instant cases, and which is now pending before the latter court on appeal.

Wherefore, it is respectfully submitted that this petition should be granted.

CHARLES E. HUGHES, Jr.,
Solicitor General.

DECEMBER, 1929.

U. S. GOVERNMENT PRINTING OFFICE: 1929